

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

LATTIMORE MATERIALS COMPANY, L.P. 1/

Employer

and

**Case Nos. 16-RC-10169 and
16-RC-10170**

**GENERAL DRIVERS, WAREHOUSEMEN AND
HELPERS, TEAMSTERS LOCAL UNION 745**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds: 2/

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 3/
3. The labor organization involved claims to represent certain employees of the Employer. 4/
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section

9(c)(1) and Section 2(6) and (7) of the Act. 5/

5. The following employees of the Employer constitute separate units appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

16-RC-10169

INCLUDED: All rock hauler drivers employed by the Employer at its Lewisville, McKinney, Dennison, Bridgeport and Mansfield facilities and tanker drivers at its Roanoke, Mansfield and McKinney facilities.

EXCLUDED: All other employees, office clerical employees, and supervisors as defined in the Act.

16-RC-10170

INCLUDED: All mixer drivers at Sherman, Lewisville, Wylie, Coppell, Mansfield, Roanoke, Blue Mound, Plano, Dallas, McKinney, and Prosper facilities, batchers, and mechanic employees.

EXCLUDED: All other employees, office clerical employees, and supervisors as defined in the Act.

DIRECTION OF ELECTION 6/

An election by secret ballot shall be conducted by the undersigned among the employees in the units found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. In this regard, Section 103.20(c) of the Board's Rules and Regulations, as interpreted by the Board, requires employers to notify the Regional Director at least five full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Failure to do so estops employers from filing objections based on nonposting of the election notice. Eligible to vote are those in the units who are employed during the payroll period ending immediately preceding the date of the Decision, including

employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the General Drivers, Warehousemen and Helpers, Teamsters Local Union 745.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list containing the **full names and addresses** of all eligible voters which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969); and *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of election eligibility lists containing the names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the lists available to all parties to the elections. In order to be timely filed, such lists must be received in NLRB Region 16, 819 Taylor Street, Room 8A24, Fort Worth, Texas 76102-6178 on or before **February 7, 2000**. No extension of time to file these lists shall be granted except in extraordinary

circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by **February 14, 2000**.

DATED this 31st day of January 2000, at Fort Worth, Texas.

/s/ Martha Kinard
Martha Kinard
Acting Regional Director
National Labor Relations Board
Region 16
819 Taylor Street, Room 8A24
Fort Worth, Texas 76102-6178

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1. The Employer's name appears as amended at the hearing.
 2. The Employer timely filed a brief which was duly considered.
 3. The parties stipulated, and I find that Lattimore Materials Company, L.P. is a Texas Corporation, engaged in the manufacture of ready-mix concrete and aggregate material. During the preceding twelve months, the Employer, in conducting its business operations, sold and shipped goods valued in excess of \$50,000 from its McKinney, Texas, facility directly to points outside the State of Texas.
 4. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
 5. The Petitioner seeks to represent two separate units. In 16-RC-10169, the original petition sought all rock hauler locations in Denison and Bridgeport excluding all

other mixer driver only operations, batchers, maintenance, mechanics, rock hauler locations in Lewisville and McKinney, and all non-mixer facilities, gravel pits, bird farm, et cetera, located in the State of Texas and Oklahoma, all supervisors, office clerical, batch managers, and their assistants. The Petitioner has amended this petition to seek a unit of approximately 209 employees including all rock haulers at the Employer's Lewisville, McKinney, Denison, Bridgeport and Mansfield facilities, excluding all mixer drivers, tanker drivers, office clerical, batchers and supervisors as defined in the Act.

In 16-RC-10170, the original petition sought all mixer drivers, batchers, maintenance and mechanic employees at the following locations Blue Mound, Coppell, Frisco, Lewisville, Dallas, McKinney, Plano, Roanoke, Wylie, Sherman, Prosper, Mansfield and Denton, excluding all other operations, including rock hauler locations in Lewisville and McKinney, all mixer facilities, gravel pits, bird farm, et cetera, located in the State of Texas and Oklahoma; all supervisors, office clerical, and batch managers and their assistants. The Petitioner amended this petition to seek to represent approximately 378 employees including mixer drivers at the Employer's Sherman, Lewisville, Wylie, Coppell, Mansfield, Roanoke, Blue Mound, Plano, Dallas, McKinney, and Prosper facilities, tanker drivers at the Employer's Roanoke, Mansfield and McKinney facilities, batchers, maintenance and mechanic employees, excluding all rock hauler drivers, office clerical, and supervisors as defined in the Act. The Employer contends the only appropriate unit would include all drivers, maintenance and mechanic employees excluding batchers, office clerical, and supervisors, a unit of approximately 572 employees. The Employer contends batchers should be excluded, as they possess supervisory authority within the meaning of Section 2(11) of the Act. The parties stipulated there is no history of collective bargaining.

The Employer is engaged in the business of manufacturing and selling concrete. The Employer mines its own rock and sand to be used at its concrete plants where it is manufactured into concrete and sold for residential and commercial use. The Employer operates eleven concrete plants and five aggregate plants that are within a 25-mile radius in North Central Texas.

The Employer's headquarters is located in McKinney, Texas. The hierarchical structure of the Employer's operations consists of President John Lattimore; vice president; the chief financial officer; Director of Human Resources and Environmental Health and Safety Director Jerry Neville; Director of Concrete Operations Craig Scott; Director of Aggregate Operations Mark Clark; director of management information systems; and a controller. An east area and a west area manager supervises the concrete plants in their respective regions. Each concrete plant has a plant supervisor and driver supervisor. In addition, where the plant is served by both mixer and rock hauler drivers such as Lewisville, there are separate supervisors for mixer and rock hauler drivers. Employees of the Employer's aggregate plants are supervised by a plant supervisor rather than an area manager.

At issue is whether the Employer's drivers should be in one combined unit or two separate units as urged by Petitioner. The Employer currently has approximately 500 drivers. The mixer drivers (280) deliver the finished concrete to residential and commercial sites located in and around the Dallas/Fort Worth metroplex. At the site the driver is responsible for ensuring that the slump or height of the concrete is pursuant to the customer order. Failure to meet customer specifications may lead to the rejection of the delivery. All mixer drivers must have a Class B Commercial Driver's License (CDL) license and two years of experience driving a bobtail or straight truck. The Employer prefers mixer drivers with two years of prior experience driving mixer trucks. The rock hauler drivers (209) haul rock and the tanker drivers (24) carry raw materials. The rock haulers pick up product at the Employer's mines in Coleman, Oklahoma; Ambrose, Texas; Bridgeport, Texas; Thackerville, Oklahoma; and Cleburne, Texas and deliver the product to the Employer's eleven concrete plants. These drivers may either have a Class A CDL or Class B CDL. The Employer requires only one year truck driving experience for rock haulers.

Rock haulers drive late model Peterbilt tractors to pull thirty foot belly-dump and end-dump trailers. Tanker drivers use tractors to pull thirty-foot tankers, similar to milk or gasoline tanks. The mixer drivers drive a late-model Peterbilt chassis with a mounted tank. All of the Employer's trucks are white and are emblazoned with a green stripe and "Lattimore Materials." The Employer issues to all its drivers uniforms consisting of a shirt and denim or cotton twill pants. The Employer further requires the drivers to wear industrial shoes, which are purchased by the drivers.

The record reflects drivers are recruited through the radio, newspaper and word of mouth. The Employer uses the same generic advertisement for the three driver positions. During the application process, all drivers are interviewed at the McKinney office. Drivers must then take a physical and drug screen test; a background check is done pursuant to the Department of Transportation. If the driver passes the tests and background check, he is provided his driving assignment. The Employer requires all drivers to be trained by riding with a lead driver or supervisor. After thirty days, the drivers are then required to go through a new employee orientation. All drivers are given the Employer's Handbook for Hourly and Commission Employees and their personnel files are maintained at headquarters. The benefits and vacation are the same for all employees.

Mixer drivers are paid an hourly rate, a \$50.00 safety bonus after thirty days and a haul bonus, which is the amount of cubic yards of cement the driver hauls times the driver's seniority. Rock hauler and tanker drivers are paid a mileage rate, a \$50.00 dollar safety bonus after thirty days and a haul bonus. Their bonus is based on a percentage of the driver's gross salary times the number of tons they move. A rock hauler receives an hourly rate of \$8.00 in the event of truck breakdown and \$10.00 if the driver has to shuttle vehicles between locations. The average mixer driver must work 55 hours to make \$730 a week; the tanker and rock hauler driver has to

work 75 hours a week to make the same amount. Mixer drivers do not have a set reporting time and work a varied number of hours per week, with a maximum of 70 hours per week. Tanker and rock haulers have a set reporting time and work scheduled days. Mixer drivers are eligible to receive overtime. Tanker and rock haulers are not eligible for overtime.

Drivers are dispatched to their assignments through dispatch headquarters in McKinney. However, the Mansfield and Roanoke facilities have their own dispatchers. If a driver is involved in an accident or a moving violation, the driver must notify his driver supervisor who, in turn, reports the incident to the plant supervisor who then contacts the safety department. If a write-up is required, the driver supervisor writes the report which is then given to the plant supervisor, area manager and finally to the Director of Human Resources and Safety.

With regard to transfers, the record evidence reveals that driver openings are posted. If two drivers are qualified for the same position, company seniority becomes the deciding factor. However, if a driver wants to transfer to a mixer position, he must have a Class B CDL license. While the record evidence revealed there were more than 10 driver transfers; the Employer provided no evidence as to the number or types of transfers between the classifications. The record evidence further reflects the only contact between the mixers and rock hauler drivers is visual when rock haulers circle to the back of the concrete plant to drop their load. Rock haulers are never in the same area as the mixer drivers. The record is silent as to any contact with the tanker drivers.

The record reveals that there are 46 truck mechanics, nine aggregate plant maintenance and four concrete maintenance. Truck mechanics perform maintenance on the Employer's trucks. Maintenance people, who maintain the concrete operations by mowing or sweeping are identified in the record as yardpeople. At the Employer's larger plants, the plant maintenance employees perform maintenance on yard equipment only. The record indicates there are 71 aggregate plant personnel and 44 concrete plant personnel but the record is silent as to what these employees' duties are.

The Act does not require a unit to be the only appropriate unit, or the ultimate unit, or the most appropriate unit; the Act requires only that the unit be "appropriate", that is, appropriate to insure to employees in each case "the fullest freedom in exercising the rights guaranteed by this Act." *Overnight Transportation Co.*, 322 NLRB 723 (1996); *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950). When determining whether a petitioned-for unit is appropriate, the Board considers whether the employees have a sufficient "community of interest." The factors to be considered are degree of functional integration; common supervision; nature of employee skill and function; degree of employee interchange; distance between locations; and bargaining history, if any. *Bowie Hall Trucking*, 290 NLRB 41 (1988) A petitioner's desire as to unit is always a relevant consideration but cannot be dispositive. *Marks Oxygen Co.*, 147 NLRB 228 (1964); *Airco, Inc.* 273 NLRB

348 (1984).

On brief, the Employer relies on *Carpenter Trucking*, 266 NLRB 907 (1983) and *Kalamazoo Paper Box Corporation*, 136 NLRB 134 (1962), for the proposition that the community of interest shared by the drivers mandates one unit in this case. The Employer's reliance on these cases is misplaced. Unlike in the instant case, in *Carpenter*, the drivers shared common supervision and had frequent and regular interchange. In *Kalamazoo*, the Union sought to sever the truckdrivers from an existing production and maintenance bargaining unit. The Board found the truckdrivers should remain in the unit as they were under the same supervision, received the same benefits, worked the same hours, were paid on the same basis and had regular and frequent interchange with the production and maintenance employees. Again, the facts in the instant case bear no resemblance to those in *Kalamazoo*.

As stated above, the record establishes that the mixer drivers do not share the same duties, wages and trucks with the rock hauler and tanker drivers. Even though the plants are within a 25-mile radius of each other, the Employer failed to demonstrate that there was any interaction between the mixer drivers and rock hauler and tanker drivers. As to interchange, the record evidence revealed more than 10 driver transfers last year, but the record was silent as to whether these transfers were permanent, temporary or which classifications were involved. Furthermore, a transfer is contingent on the driver's license and position as a mixer driver requires a Class B CDL license. Moreover, the record evidence reveals the mixer drivers and rock haulers have separate supervision. Lastly, the parties stipulated there was no collective bargaining history. See *D & L Transportation*, 324 NLRB 160 (1997). Although centralized administrative control, uniform employee benefits and personnel policies may well support a finding of a broader unit, the Employer has the burden to establish that the petitioned-for narrower unit is inappropriate. *Executive Resources Associates*, 301 NLRB 400 (1991) citing *NLRB v. Living & Learning Centers*, 652 F.2d 209 (1981). The Employer has failed to rebut the presumptive appropriateness of the petitioned-for units. Both parties agree that maintenance and mechanics should be included in any unit found appropriate.

Applying the foregoing principles in *Bowie*, I find there is sufficient evidence demonstrating the appropriateness of two separate driver units. In reaching this determination I rely on numerous factors. Initially, rock haulers and mixer drivers do not share common supervision. They are not only paid differently (loaded miles versus hourly), but there is also a significant disparity in pay between these two classifications. While both classifications are eligible for a haul bonus, these bonuses are calculated differently for rock haulers and mixer drivers. Additionally, rock haulers and mixer drivers are dispatched separately and do not interact. Given the dissimilarity in CDL license requirements and pay, there is little interchange between these two classifications of drivers. While both drive large commercial trucks, the equipment is different (18 wheeler for rock haulers versus shorter mixer trucks with mounted tanks for mixer drivers). Mixer drivers typically do not drive

more than 30 minutes from concrete plant to the customer's location. Rock haulers, on the other hand, drive between Employer's mines (including out of state locations) and its concrete plants. Moreover, given the fact that rock haulers drive exclusively on the highway and mixer drivers are frequently required to drive "off road" there is dissimilarity in the training and driving skills required to operate these trucks. Likewise, mixer drivers have additional responsibilities related to the pouring of concrete. Rock haulers do not have these additional responsibilities. In recognition of these differences, the Employer requires at least two years prior truck driving experience for mixer drivers and only one year truck driving experience for rock haulers. Rock haulers and mixer drivers' hours of work are dissimilar (different shifts and different number of hours) and mixer drivers are eligible for overtime, while rock haulers are not eligible for this additional pay. Finally, tanker drivers are paid by the mile, are ineligible for overtime, drive trucks similar to rock haulers, possess the same type of driver's license and their bonus is calculated in the same fashion as rock haulers. In sum, tanker drivers are more closely aligned with rock haulers than mixer drivers and are properly included in the rock hauler unit.

The record evidence reveals mechanics are responsible for maintenance of all the Employer's trucks. As a general matter, the Board views the classifications of driver and mechanic as functionally integrated and finds that they may be appropriately included in the same unit. *Airco, Inc.*, supra. The Employer presented some evidence about the maintenance employees, however, the record evidence is insufficient to indicate whether there is any community of interest between these employees and the drivers.

Based on the foregoing differences, in 16-RC-10169, I would find an appropriate unit of rock haulers and tanker drivers and in 16-RC-10170, a unit of mixer drivers, batchers, and mechanics. I would further find that the maintenance, aggregate and concrete plant personnel be excluded from either unit as neither the Employer nor the Petitioner presented any evidence to indicate they share a community of interest with any drivers.

At the hearing, the Employer contended the batchers were supervisors as defined by Section 2(11) of the Act. The Employer asserts that these individuals have the authority to effectively recommend discipline and direct the work of the assistant batchers. The record evidence reflects batchers receive an order for a specific mix of concrete that is entered into a computer which directs the mixture to the batching equipment. They also direct the work of the assistant batchers by teaching them the components of the keypad. Batchers designate which trucks are to be loaded with concrete and then direct the truck into the loading dock. Once the truck is in the dock, a batcher triggers the loading of concrete. The record further revealed they do not have the authority to hire, fire or issue discipline to assistant batchers. With regard to discipline, the evidence revealed one isolated incident where a batcher and production manager issued a disciplinary warning to a mixer driver. The record indicated the batcher could only make suggestions to the drivers' supervisor. The

presence or absence of the exercise of independent judgment is an important factor weighed by the Board in making its supervisory determinations. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991). The burden of proof falls on the party asserting supervisory status. *Bennett Industries*, 313 NLRB 1363 (1994); *Bowne of Houston*, 280 NLRB 1222 (1986). Neither party presented these disputed individuals as witnesses in the hearing. The evidence on the record is insufficient to find that these individuals have the authority to hire, fire, discipline, transfer, or effectively recommend any of these actions. The record evidence established that the batchers have a community of interest with the mixer drivers as the two classifications are functionally integrated in the process of delivering concrete to the customer. Based on the foregoing, I find that the batchers are not supervisors as defined in the Act and are properly included in the mixer driver unit in Case 16-RC-10170.

6. In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

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